

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Performance Measurements and Standards)	CC Docket No. 01-318
Unbundled Network Elements and)	
Interconnection)	
)	
Performance Measurements and Reporting)	CC Docket No. 98-56
Requirements for Operations Support)	
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Association for Local)	
Telecommunications Services for)	
Declaratory Relief)	

COMMENTS OF SPRINT CORPORATION

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COMMENTS OF SPRINT CORPORATION

Sprint Corporation, on behalf of its incumbent LEC, competitive LEC, long distance, and wireless divisions, hereby respectfully submits its comments in the above-captioned proceeding in response to the Notice of Proposed Rulemaking (NPRM) released November 9, 2001 (FCC 01-331). Sprint's incumbent LEC division provides UNEs. Sprint's competitive LEC, long distance and wireless divisions purchase UNEs. Sprint's position strikes a balance between the interests and needs of both the providers of UNEs, who will need to implement and comply with whatever performance measurements and enforcement mechanisms are adopted, and the purchasers of UNEs who will benefit from adoption of performance measurements and enforcement mechanisms.

I. INTRODUCTION AND SUMMARY

In this NPRM the Commission seeks comment on whether it should adopt performance measurements for evaluating ILEC provisioning of UNEs and enforcement measurements for violation of same to "further a Commission goal of fostering facilities-based competition while promoting simultaneously competition, innovations, and deregulation."¹ The Commission proposes twelve performance measurements for the critical phases of pre-order, ordering, provisioning, and maintaining UNEs. The Commission also requests comment on whether it should adopt enforcement mechanisms to redress the harm caused by failures to provide nondiscriminatory access to UNEs and to foster adherence to any performance measurements it adopts.

Sprint supports, with minor modifications and additions, the performance measurements proposed by the Commission. Sprint asserts that these performance measurements should not be adopted as minimum rules or guidelines; but rather, as national rules that apply, without modification, throughout the nation. These national rules must be accompanied by enforcement mechanisms. For the RBOCs, Sprint proposes self-effectuating damages to compensate carrier-customers for harms suffered due to the discrimination and monetary forfeitures to produce the desired result of fostering facilities-based competition (which in turn should benefit all American consumers of telephony services.) With regard to independent incumbents, self-effectuating enforcement mechanisms are not necessary and are not recommended. Rather, the Section 208 complaint process should fulfill the need for enforcement.

A bifurcated approach for reporting and auditing is also necessary. The RBOCs should report results monthly to the Commission, State Commissions, and carrier-customers

¹ NPRM at para. 5.

purchasing UNEs from the RBOC. Annual Commission audits of the RBOCs should be performed and carrier-customers should have the right to request limited audits of specific performance measurements, at the carrier-customer's expense.

The independent incumbents should prepare reports monthly so as to have the reports available upon request of the Commission, State Commission, or carrier-customers that are purchasing UNEs from the independent and should file an annual report with the Commission. Carrier-customers should have the right to request limited audits, at their expense, of specific performance measurements.

Finally, no sunset provision for the performance measurements or the enforcement mechanisms should be adopted.

II. FINAL AND CERTAIN NATIONAL RULES CAN BE AND MUST BE ADOPTED

One of the Commission's primary goals in considering national performance measurements is to learn whether such measurements can "serve to rationalize the multiple regulatory requirements, and thereby not increase incumbent carriers' regulatory burdens."² Such national performance measurements can so serve, and must do so, not only to reduce regulatory burdens on incumbent carriers but also on their carrier-customers.

Varying, and sometimes conflicting, state interpretations of the 1996 Act and accompanying Commission Rules produce greater expense and resource utilization (people and systems) for the incumbents that must comply and, significantly, for their carrier-customers that try to compete in multiple states. Rather than foster competition, conflicting regulatory rules and standards actually hinder competition by creating multiple standards that

² Id., at para. 16.

the incumbents and carrier-customers must implement, support, and monitor. The Commission itself acknowledges this problem:

The absence of a clear set of federal standards, however, makes it harder to detect and resolve inconsistent federal and state approaches to compliance with the Act, **and the proliferation of differing state requirements may impose increasingly divergent and costly requirements on carriers.** [Emphasis supplied.]³

This problem exists today with regard to UNE Performance Measurements.

Performance measurements have been addressed in various generic state proceedings or merger conditions to date, and it is clear that this approach has resulted in significant inconsistencies in the types of measurements, standards and penalties that will be applied. Inconsistencies drive up implementation costs for all parties, whereas, consistency allows for replication which leads to more efficient implementation.

The Commission seeks comment on whether national guidelines will "result in greater consistency of certain state standards over time."⁴ Guidelines, by themselves, will not produce the results the Commission seeks. Since the passage of the Act, there have been numerous examples of varying State rulings in areas where the Commission has not established bright line federal rules that cannot be varied. In the Collocation Interval Order⁵ the Commission adopted guidelines, not national rules for completion intervals for collocation. The Commission pointed to four States that had already adopted intervals, similar to, but not identical to, what the Commission ultimately adopted.⁶ Since the adoption of the Commission's order none of those States have moved to conform their rules

³ Id., at para. 4.

⁴ Id.

⁵ In the Matters of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No.98-147, Order on Reconsideration and Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147, FCC 00-297, Released August 10, 2000.

⁶ Id., at paras. 17-19, noting the rules adopted in Texas, Pennsylvania, Florida, and New York.

to the "guidelines" set forth by the Commission. Since the Collocation Interval Order, at least one state, North Carolina, has adopted collocation intervals, similar to but NOT identical to those of the Commission.⁷ Accordingly, the only way to ensure a single set of performance measurements, as opposed to as many as 52, is to have one national set applicable throughout the nation.

The Commission states that it has the legal authority to adopt such rules. Sprint agrees. As the Supreme Court stated, "201(b) *explicitly* gives the FCC jurisdiction to make rules governing matters to which the 1996 Act applies."⁸ To have any meaning or true function, this authority must extend, not only to adopting a national list of UNEs under Section 251 of the Act, but also to measurements of compliance with the Act's nondiscriminatory standard for provisioning UNEs.⁹

III. ENFORCEMENT MECHANISMS, INCLUDING SECTION 271 CONSIDERATIONS ARE NECESSARY

The Commission seeks comment on whether it should adopt "specific enforcement policies or guidelines for responding to violations of any national measurements and standards...."¹⁰ The Commission should establish specific enforcement mechanisms for the RBOCs. Performance measurements and standards for the RBOCs will not produce the desired result of fostering competition unless there are corresponding swift and certain

⁷ In the Matter of Generic Proceeding on the Provisioning of Collocation Space, Docket No. P-100, SUB-133j, Order Addressing Collocation Issues, December 28, 2001.

⁸ AT&T Corporation, et al. V. Iowa Utilities Board et al., 525 U.S. 366, 378 (1999), wherein the Court affirmed the Commission's authority to adopt rules to implement Section 251, including specifically 251(c) creating UNEs and other local competition provisions of the Telecommunications Act of 1996 notwithstanding that the services to be provided thereby intrastate in nature.

⁹ 47 U.S.C. § 251(c)(3).

¹⁰ NPRM at para. 22.

enforcement mechanisms. Rather, the absence of such enforcement mechanisms has and will continue to result in increased regulatory burdens for the incumbents, their carrier-customers, and regulators as they repeatedly, on a case by case basis, debate the proper redress for violations.

This is not; however, a case of "one size fits all." There is a long history of treating RBOCs and independent telephone companies differently. To cite but a few examples: the MFJ applied only to the RBOCs (GTE, which is now a part of Verizon, was subject to a similar GTE-only Consent Decree); Sections 271 and 272 and their implementing regulations apply only to the RBOCs; and the RBOCs are subject to more stringent accounting and reporting requirements than are non-RBOC ILECs.¹¹

The rationale has varied, but generally has focused on the fact that the independents serve primarily rural areas (all of Sprint's incumbent local companies, except for Nevada, are Rural Carriers under the Act), have widespread and diverse geographic territory, and lack the market power of the RBOCs. Importantly, for this proceeding, most independents have not seen the same degree of competitive activity as the RBOCs. Indeed, in Sprint's incumbent local territory there have been no UNE orders in four states and there are less than one hundred UNE loops and UNE-P arrangements in thirteen states out of the eighteen states that Sprint's incumbent local division serves. To adopt a bright line test for

¹¹ See, In the Matter of 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Released November 5, 2001. If the Commission needs additional justification for treating independent incumbent differently from the RBOCs, Sprint respectfully invites the Commission's attention to Sprint's Comments filed this date in CC Docket No. 01-321, In the Matter of Performance Measurements and Standards for Interstate Special Access, NPRM, released November 19, 2001.

independent incumbents would, at best, be premature, and at worst, a solution in search of a problem.

Sprint urges the Commission to adopt one set of RBOC specific enforcement mechanisms and to rely on existing enforcement rules for the independent incumbents.

A. RBOCs

Thus, as explained below, Sprint supports the use of damages, payable to the effected carrier-customers and monetary forfeitures for the RBOCs.

Sections 206-208 of the Act clearly authorize carriers to file complaints for violation of the Act and Commission rules and authorize the award of damages to the injured party.¹² The performance measurements and standards to be adopted herein should create a bright line test for the RBOCs. Failure to meet the standards results in discrimination, and this discrimination will cause real, not presumed, damages to the RBOCs' customer-carriers by impacting their ability, among other things, to install and service their end users, in a manner comparable to that which the ILEC installs and services its end users. This impact will in turn trigger the loss of end users and end user good will which cause real financial harm.

However, Sprint believes that a process whereby each carrier-customer must file a complaint and prove the amount of damages suffered in every instance of an RBOC failure will quickly overwhelm the carrier-customers, the Commission, and the RBOCs. Sprint believes that Sections 206-208 authorize the Commission to set self-effectuating damages for failure to meet the standards of each Performance Measurement.

While the harm suffered by the individual carrier-customers is likely to be substantial for them; it is unlikely, given the size of the RBOCs, that damages alone will be sufficient to bring about the desired behavior and consequent result of improved competition that will

¹² 47 U.S.C. §§ 206 - 208.

benefit consumers. Monetary forfeitures are also necessary; tied to the size of the offending RBOC and the frequency of violation. Consecutive violations of the same standard for the same performance measurement, or overall consecutive repeat violations of the standards for multiple performance measurements, must trigger large monetary forfeitures. The Commission already has Rules allowing for upward adjustment of monetary forfeitures for, *inter alia*, "repeated or continuous violation[s]" and for "prior violations of any FCC requirements[;]" however, Sprint does not believe that these adjustments provide sufficient upward mobility to deter particularly egregious behavior.¹³ Rather, Sprint believes that the Commission needs to set new forfeiture standards with upward adjustments for RBOC violations of the standards.

The Commission also seeks comment on how, and whether, enforcement mechanisms should interface with Section 271. Specific, federally mandated performance measurements should go hand in hand with Section 271. Section 271 authorization requires compliance with Section 251's nondiscriminatory provision of UNEs requirement. The performance measurements and applicable standards will demonstrate whether this compliance exists and therefore must form a critical part of any Section 271 application review. Indeed, a single set of federally mandated performance measurements, as opposed to varying and conflicting State measurements, will add a measure of efficiency to Section

¹³ Commission Rule 1.80, 47 C.F.R. § 1.80. Indeed, one need only look at the history of the SBC Merger Conditions adopted in October 1999 in the SBC/Ameritech Merger Order, CC Docket No. 98-141, 14 FCCC Rcd 14712 (1999) wherein the Commission adopted certain Merger Conditions, many related to opening SBC's local markets. On January 18, 2002, more than two years after SBC was allowed to merge with Ameritech, the Commission proposed a \$6 million dollar forfeiture for SBC's continuing violations of the Merger Conditions (this time for failure to provide the shared transport UNE as ordered.) This is simply the last in a succession of increasingly severe forfeitures imposed on SBC for violation of the Merger Conditions and causes one to think that perhaps the existing forfeiture rules are inadequate to sufficiently drive appropriate, compliant behavior from entities as large as the RBOCs.

271 proceedings for all parties involved -- the Commission, the State Commission, the DOJ, the incumbent, and the carrier-customers of UNEs. A federally mandated standard will create a single bright line test to be used in all 271 proceedings, rather than having to review each proceeding under different standards or without any standards on a state-by-state, RBOC-by-RBOC basis.

The federally mandated performance measurements and standards should also play an important role after the grant of 271 authority. Consecutive violations of a single performance measurement standard or frequent violations related to multiple or different measurements will demonstrate backsliding and noncompliance with Section 271 after the authority has been granted and the RBOC is competing in the interstate long distance market. Sprint acknowledges that reversal of Section 271 authority would cause tremendous customer confusion and service disruption and accordingly, does not propose that withdrawal of Section 271 authority be identified as a self-effectuating remedy. However, other Section 271 enforcement mechanisms should be put in place for chronic violations of the performance measurement standards such as removing authority to market and sign up new customers until the chronic condition has been corrected.

B. Independent ILECs

For the independent incumbents, the performance standards should not function as a bright line, but rather should create a rebuttable presumption of compliance. If an independent's performance is falling short of meeting the standard, then any carrier customer whose ability to compete is being hindered by this shortfall can file a Section 208 complaint. The incumbent would have an opportunity to rebut the presumption that it is violating the performance measurements. If it cannot do so, appropriate enforcement mechanisms can then be imposed on a case by case basis.

As noted above, to simply impose a bright line test and self-effectuating damages for independents is not necessary or warranted, and the increased burden on independent incumbents is not justified in the current situation. The Commission can review this independent standard in the event of evidence of increased competitive demands in the independent's territories and evidence of consistent discriminatory behavior on the part of the incumbents. Such review should be in a Further Notice of Proposed Rulemaking if and when circumstances warrant.

IV. SPECIFIC PERFORMANCE MEASUREMENTS AND STANDARDS

The Commission proposes twelve specific performance measurements. Sprint supports the Commission's proposal with minor modifications, deletions, and additions as hereinafter noted. A completed model for each of the proposed performance measurements in this section is attached hereto as Exhibit A.. Unless otherwise noted, reporting should be done monthly, with a twenty day lag time between the end of the month and the report due date, and on a state-wide basis. Disaggregation levels, exclusions, and business rules for each measurement are set forth in Exhibit A.

As reflected in Exhibit A, the appropriate standard is parity -- a comparison of what the ILEC provides for the carrier-customer and what the ILEC provides itself, its affiliates, and other CLECs. Where a retail analog exists, this parity standard is the sole means to demonstrate compliance with the Act's nondiscriminatory standard. Where a retail analog does not exist, a benchmark standard should be adopted. To be meaningful, the reports should provide the ILEC's performance for itself; for its affiliates; for all carrier-customers; and, subject to appropriate proprietary controls for carrier-customer sensitive information, for each carrier-customer.

The specific performance measurements Sprint recommends.

A. Pre-Order Measurement.

1. **OSS Pre-Order Interface Response Timeliness.** Sprint proposes OSS Pre-Order Interface Response Timeliness which is the same as the Pre-Order Measurements proposed by the Commission. This measures the response interval for each pre-ordering query by computing the elapsed time from the ILEC receipt of the query to the time the ILEC returns the requested data to the carrier-customer.

B. Ordering Measurements.

1. **FOC Timeliness.** The Commission proposed an Order Notifier Timeliness Measurement. Sprint essentially supports adoption of this measurement, but suggests that it be broken into two separate measurements that will aid the carrier-customer's receipt of timely performance from the ILEC - something the carrier-customer needs if it, in turn, is to provide timely performance to its end users.

a. **FOC Timeliness Measurement.** Sprint proposes the FOC Timeliness Measurement to measure the average time from the ILEC's receipt of a valid service request to the time the ILEC returns a Firm Order Confirmation/Local Service Confirmation.

b. **Reject Timeliness.** Sprint supports adoption of this measurement to measure the elapsed time between the ILEC receipt of an order from a carrier-customer and the ILEC's return of a notice of rejection to the carrier-customer.

2. **Order Completion Notifier Timeliness.** Sprint supports adoption of this Commission - proposed measurement. It measures the average time per order the ILEC requires to return a completed order notification to the carrier-customer.
3. **Percent of Jeopardies.** Sprint supports adoption of this Commission - proposed measurement. This measurement tracks the percentage of total orders processed from which the ILEC notifies the carrier-customer that the order will not be completed on the due date set forth in the FOC.

C. Provisioning Measurements.

1. **Percentage on Time Performance.** Sprint supports adoption of this Commission - proposed measurement to measure the percentage of new, move and change orders for which installation was completed by the due date set forth in the FOC. Additionally, with adoption of this measurement, Sprint does not believe the Commission should adopt its proposed Percentage Missed Appointments Measurement because it measures essentially the same thing.
2. **Average Delay Days of Missed Installation Orders.** Sprint supports adoption of this Commission - proposed measurement to measure, for missed installation orders, the average calendar days from the due date set forth on the FOC to the actual completion date.
3. **Installation Quality.** Sprint supports adoption of this Commission - proposed measurement, with a modification. The Commission measurement proposes measuring the percentage of completed order for which carrier-customers report trouble within the first 30 days after

completion of the order. As noted above, parity should be the standard wherever a retail analog exists. Some ILECs already measure installation quality for themselves, not necessarily based on the first 30 days after completion of the order. Sprint's local division currently measured its quality installation for itself for the first five days following completion of the order. Accordingly, Sprint believes this measurement should be tied to what the ILEC measures for itself. If the ILEC has no current measurement in place, 30 days could be used as the default

- 4. Open Orders in Hold Status.** Sprint supports adoption of this Commission - proposed measurement, which measures the percentage of delayed orders.
- 5. Average Jeopardy Notice Interval.** Sprint proposes this measurement as an additional Provisioning measurement. It measures the remaining time between the pre-existing order completion date and time set forth on the FOC and the time the ILEC issues a notice to the carrier-customer indicating an order is in jeopardy of missing the due date. Timely receipt of jeopardy notices is critical to a carrier-customer's ability to communicate with its end user on the status of their order. Carrier-customers should be receiving these jeopardy notices as quickly as the ILEC's own retail end users (and affiliates) so that the carrier-customers can provide levels of customer service comparable to the ILEC, a necessary ingredient to any carrier-customer's ability to compete.

¹⁵ NPRM at para. 60.

- 6. Average Completion Interval.** Sprint proposes this measurement as an additional Provisioning measurement to track the average number of business days from the ILEC's receipt of a valid, error-free service request to the completion date for new, move, and change orders. Completion of these orders in a timely fashion is a critical component of a carrier-customer's relationship with its end users. The carrier-customer must provide service on a comparable, nondiscriminatory basis with the ILEC, and this performance measurement will demonstrate whether or not the ILEC is providing nondiscriminatory service levels.

D. Maintenance and Repair Measurements.

- 1. Trouble Report Rate Measurement.** Sprint supports adoption of this Commission - proposed measurement which measures the total number of network customer trouble reports received within a calendar month per 100 UNEs.
- 2. Repeat Trouble Rate Measurement.** Sprint supports adoption of this Commission - proposed measurement which measures the percent of customer network trouble reports received within 30 calendar days of a previous report.
- 3. Time to Restore Measurement.** Sprint supports adoption of this Commission - proposed measurement which measures the average duration of carrier-customer trouble reports from the receipt of the trouble report to the time the report is cleared.

- E. Network Performance Measurements.** Sprint proposes the addition one new measurement under the general category of Network Performance. Network

Performance tracks the level at which the ILEC provides services and facilitates call processing within its network.

1. Percent Blocking on Interconnection Trunks. As a diagnostic measurement only (i.e. Sprint does not believe enforcement mechanisms are necessary for this measurement) Sprint proposes this measurement to track the percent of final dedicated interconnection trunk groups exceeding 2% blockage. The quality of interconnection trunks is integral to a carrier-customer's ability to effectively utilize UNEs and provide a quality service, comparable to the ILEC's. To solely look at the performance levels related to UNEs - without also reviewing the quality of the interconnection trunks, will provide an incomplete picture at of whether the ILEC is truly providing services and facilities on a nondiscriminatory basis.

F. Billing Measurements. Sprint believes that a Billing Measurement category is essential and proposes two specific measurements. Timely and accurate billing is a critical component of the carrier-customer's ability to compete through UNE-based competition. Any business needs timely and accurate statements of, not just incoming revenue, but of ongoing expenses, such as UNE bills, to be able to operate efficiently and profitably.

1. Bill Timeliness Measurement. Sprint proposes adoption of a Bill Timeliness Measurement to capture the elapsed number of calendar days between the scheduled close of a bill cycle and the ILEC's transmission of the associated invoice to the carrier-customer.

2. Bill Accuracy Measurement. Sprint proposes adoption of a Bill Accuracy Measurement, as a diagnosis measurement only, to measure the

percentage of the total bill amount that is not adjusted by correcting service orders or adjustments for the month.

V. COLLOCATION PERFORMANCE MEASUREMENTS SHOULD BE CONSIDERED

Generally, collocation is the means for carrier-customers to access UNEs. As such, collocation is a critical component in the UNE provisioning process. Timely ILEC collocation responsiveness impacts a carrier-customer's ability to utilize the provisioned UNEs and to enter a market and provide service new customers. Accordingly, in addition to specific UNE provisioning performance measurements, Sprint recommends that the Commission adopt two collocation performance measurements.

A. Average Time to Respond to a Collocation Arrangement Measurement.

Sprint proposes adoption of this measurement of the average number of calendar days the ILECs requires to respond to complete collocation requests. Sprint proposes that the appropriate standard is ten calendar days from receipt of the application for the ILEC to respond as to the availability of space. The ILEC should have an additional five calendar days to provide a quote.

B. Average Time to Provide a Collocation Arrangement Measurement. Sprint

proposes adoption of this measurement of the average number of calendar days the ILEC requires to complete (build) a requested collocation arrangement. The appropriate standard is ninety calendar days from the receipt by the ILEC of a completed order -- the date the

ILEC receives, in response to the ILEC's price quote, the carrier-customer's firm order and deposit.¹⁶

VI. IMPLEMENTATION ISSUES

The Commission seeks comments on several implementation issues including performance measurement sunsets, reporting procedures, auditing procedures, and statistical tests.

Adoption of any sunset provision at this time would be premature. At a minimum, it will take several years of actual operation to determine the effectiveness of the performance measurements in achieving desired results and behavior. Rather than adopt any specific timeline at this time, Sprint believes the Commission can, if warranted, revisit the performance measurements, standards, and enforcement mechanisms as part of its biennial review process.

The RBOCs should report their results to the Commission and requesting State Commissions and carrier-customers (carriers that are actually ordering UNEs) on a monthly basis. The filing date should lag the end of each month by twenty days. Independent ILECs should prepare results monthly and should file them with the Commission annually.¹⁷ Individual monthly results should be produced, with a twenty day lag, upon

¹⁶ The standards that Sprint proposes for both collocation performance measurements were proposed by Sprint as appropriate intervals in Sprint's October 12, 2000 Comments in response to the Second Further Notice of Proposed Rulemaking in CC Docket No. 98-147 and the Fifth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, released August 10, 2000 (FCC 00-297).

¹⁷ The Commission has just adopted less stringent reporting and accounting requirements for the independents than for the RBOCs **In the Matter of 2000 Biennial Regulatory Review -- Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 2**, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286, Released November 5, 2001; recognizing that the independents' lack of size and scale and lack of geographic contiguity, *inter alia*, justified a less stringent standard. Given the differences between the RBOCs and

request by the Commission, a State Commission, or a carrier-customer that orders UNEs from the incumbent. Raw data need not be posted, but should be stored in secure locations for 24 months and be available for review to the Commission for an audit or to a requesting carrier-customer for a limited audit (as more fully explained below.) The raw data must be subject to appropriate proprietary procedures to assure the protection of sensitive competitive information of the incumbent and of carrier-customers, including affiliates of the incumbent.

The RBOCs should perform an audit, upon adoption of the rule, and annually thereafter. This audit should be filed with the Commission and provided to requesting carrier-customers. The efficacy of same and need for continuation of these annual audits can be reviewed as part of the Commission's biennial review process.

Additionally, RBOCs and independent incumbents should be subject to limited audits of individual performance measurements during the year at the request of carrier-customers. These limited audits would be initiated upon written request of the carrier-customer and designation of a representative to engage in discussions with the ILEC. If, thirty days after the carrier-customer's written request for a limited audit, the carrier-customer believes the issue has not been resolved, the carrier-customer will commence the limited audit with five days advance written notice. The carrier-customer shall bear the cost of the limited audit unless the ILEC has misreported or is misrepresenting data, in which case the ILEC pays for the limited audit, including the carrier-customer's cost. Each carrier-customer should be limited to auditing three performance measurements in a calendar year.

independents as demonstrated above (Section III, *supra*), especially the small size of the independents and the lesser competitive demands in the independents' territories, a difference in reporting

The Commission also seeks comment on the development, implementation, and analysis of the results of various statistical measures available. As the Commission notes, such statistical analysis can be helpful in determining whether reported differences in an ILEC's performance for retail customers and carrier-customers is due to behavior or random chance. Sprint's position on the appropriate statistical testing is set forth on the attached Exhibit B.

VII. CONCLUSION

Sprint applauds the Commission's commencement of this proceeding. Performance Measurements are necessary to determine whether the ILECs are providing nondiscriminatory provisioning of UNEs in compliance with the Act. A single set of such measurements, to apply to all ILECs in all States, is necessary so as not to overly burden the ILECs or their carrier-customers. Without such a nation-wide single set of measurements there is the possibility that 52 sets of such measurements will be adopted, an untenable situation for all parties.

However, measurements alone will not advance the Commission's goal of fostering competition and thereby benefiting the American consumer. Substantive performance measurements and standards, and enforcement mechanisms for violations of the discrimination requirement, as determined through the performance standards, must accompany the measurements. However, the differences between the RBOCs and the independent incumbents - in size, geographic scope, contiguous territory; and, competitive demands in individual markets - require different enforcement mechanisms for the RBOCs than for the independents. The RBOCs should be subject to damages, payable to the carrier-customers that are harmed by discrimination, and forfeitures of sufficient size, to drive the desired results.

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January 22, 2002

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